
REMARKS

Applicant's representative has reviewed and considered the office action mailed on June 4, 2003 and the references cited therewith.

Claims 1-9 and 35-43 are now pending in the application.

§ 103 Rejection of the Claims

Claims 1-9 and 35-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishimura *et al.* (U.S. 6,344,761). Applicant respectfully traverses the rejections of claims 1-9 and 35-43.

Claims 1 and 35 recite, "a switch connected across the pair of output nodes." The office action on page 2, at paragraph 3, states:

Not disclosed is the recited "switch" (line 3 of claim 1) but such would have been obvious to those having ordinary skill in the art because such switches are old and well-known in the art for the well-known purpose of equalizing the output nodes of a differential amplifier prior to comparing the potential difference across the output nodes. The same is true for the limitation of a second switch across the output nodes of the second stage.

Applicant respectfully disagrees that "a switch connected across the pair of output nodes" is well known in the art. Since all the elements of the claim 1 are not found in the cited reference, applicant assumes that the Examiner is taking official notice of the missing element from an undisclosed source. Applicant respectfully objects to the taking of official notice, and pursuant to M.P.E.P. § 2144.03, applicant traverses the assertion of official notice and requests that the Examiner cite a reference that teaches the missing element. If the Examiner cannot cite a reference that teaches the missing element, applicant respectfully requests that the Examiner provide an affidavit that describes how the missing elements are present in the prior art. If the examiner cannot cite a reference or provide an affidavit, applicant requests withdrawal of the rejections and reconsideration and allowance of claims 1 and 35.

Applicant notes that paragraph 4 of the office action states that the above recited argument has been considered and has not been found to be persuasive. Paragraph 4

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concludes with, "Several of the references previously cited show such a concept, as well as the several new references attached to this office action." Applicant respectfully submits that references that "show a concept," but are not applied in a rejection cannot be used to support the rejection, so applicant respectfully requests that the Examiner provide a affidavit or apply the references in a rejection.

Claims 2-9 are dependent on claim 1. For reasons analogous to those stated above, applicant respectfully requests withdrawal of the rejections and reconsideration and allowance of claims 2-9.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone applicant's attorney at 612-371-2109 to facilitate prosecution of the application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JAMES E. JAUSSE ET AL.

By their Representatives,

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Date October 16, 2003

By Danny J. Padys

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6th day of October, 2003

DANNY PADYS

Name

Danny J. Padys
Signature